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"the hometown choice"

August 28, 2012

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Ex Parte Presentation in MB Docket No. 10-71

Dear Ms. Dortch:

With this Ex Parte, I would like to share my Retransmission Consent experience as a cable operator and identify how the process is broken. I understand there are a number of other issues needing change with the outdated 1992 Cable Act; my focus will be on the crippling impact of Retransmission Consent negotiations.

BACKGROUND:

Tobacco Valley Communications (TVC) is a small cable provider in Eureka, Montana with 423 subscribers today, down from a high of 630 in 1997; given aggressive competition with satellite providers, significant cost increases of programming and the availability of free and low cost video over the Internet (known as Over the Top or OTT).

RETRANMISSION CONSENT CONUNDRUM:

As a small cable provider we are unable to negotiate a reasonable rate when forced to deal with "one" provider. Taking into account the Big-4 networks, DMA rules, exclusivity and non-duplication rights; a cable provider (such as TVC) is assigned to work with one ABC network provider; one NBC network provider; one CBS network provider and one FOX network provider. Given this arrangement we are unable to negotiate reasonable rates. Fair and open market negotiations cannot exist when there is only one provider of a "goods or service." Consequently, small operators are offered exorbitant rates and told to "take it or leave it" with all the pressure to resolve the problem being on us and the customers. It is a monopoly arrangement afforded to the networks and it forces rate increases on customers that are unethical.

SIZE MAKES A DIFFERENCE:

Small operators like TVC, with 423 subscribers have no negotiating power in the process of Retransmission Consent Agreements. It raises the question as to what level or how many customers does it take to raise a level of negotiating power. We are no threat to a network if/when we go dark during negotiations. Likewise, an operator with 10 or 20 times our size would be no threat to a network if it were to go dark. When such cases arise, it becomes a waiting game between the two to see how long the operator can afford to lose customers before caving into a network's demands. In terms of price or rates paid; given the lack of negotiations, small operators pay significantly more than larger operators (such as Dish and Direct TV). The inability to disclose rates from one operator to another is difficult to track but said to be a multiple up to 2 to 3 times higher for a small operator to provide the same programming; raising question to level playing fields and competition. This high cost of programming combined with competitive pressures of satellite operators who obtain much lower rates, is the reason over 800 small cable operators went out of business the last 4 years.

RETRANSMISSION CONSENT EXPERIENCE WITH TVC:

2009: In 2009 Retransmission Consent Agreements with ABC, NBC, CBS and FOX exercised their "right to charge" (where years prior, there was typically no cost of carriage except for the transport). In the case of TVC, the negotiated rates were reasonable and fell in-line with other programming; <u>with the exception of ABC, where negotiations failed and the network was pulled-off and went dark for 3 months while negotiations resumed and terms were worked out</u>. The 3-month outage was a hardship on customers and TVC, where in the end we lost business and customers.

2012: In 2012 Retransmission Consent Agreements were up for renewal (3-year terms). The rate increases were excessively high, placing the networks in the top 5 most expensive programming purchased by TVC. Once again, we could not come to reasonable terms with ABC. We were given a 60-day extension (from our anniversary date of March 31), but <u>still unable to come to a reasonable agreement considering a 400% rate increase and 15-20% per year increases for each of the following years. As of May 31, we pulled ABC off our cable system and it continues to remain dark today</u>. Not having an ABC network is a critical hardship to our business and once again to our customers.

2012 RETRANSMISSION CONSENT AGREEMENTS & BUNDLING SIDE CHANNELS:

The 2012 Retransmission Consent Agreements surfaced a new concept with required bundling of "digital side channels" among the Big-4 networks. This comes at the significant cost of having an additional monthly subscriber rate structure, along with head-end operator equipment to receive and support the new broadcasts. It's another example of forced market power to coerce operators into paying more and distributing unwanted channels on customers; thus driving up the price. This bundled requirement strategy has been used in the past with the growing media consolidation groups of large networks; and it's the reason consumers are paying for many of the unwanted, unwatched and unmarketable channels we have today.

In summary, I request for needed changes to be made to the 1992 Cable Act, specifically as it relates to Retransmission Consent rules. The current process does not work because there cannot be "open and free market negotiations" when only one provider offers the service in a given DMA. As a cable operator we are in a stranglehold to pay whatever rate is demanded of us by the Big-4 networks. This is a monopoly at its truest definition and one in which some networks are taking extreme advantage of their position. There is a voice among the NAB (National Association of Broadcasters) that Retransmission Consent works as it is today and it should be left alone. This is clearly not true and can easily be countered by having the FCC study and determine where the rates are among cable and satellite operators; how much they are paying; what are the percentage rate increases; how many blackouts are experienced (it's reportedly up 35% for 2012). Once these questions are answered, needed improvements to Retransmission Consent could be much better understood and addressed. Thank you for your consideration.

Sincerely,

Randy Wilson
General Manager

cc: Steven A. Broeckaert, Senior Deputy Chief, Policy Division of the Media Bureau